DAVIDSON *v.* WASHINGTON & O. D. RY.

Jan. 20, 1921.

[105 S. E. 669.]

1. Carriers (§ 316 (1)*)—Persons Assisting Passengers Not Presumed Carrier's Employee from Mere Presence.—Where a man with a cap and uniform, assisting passengers to alight, was not identified, it could not be presumed, merely from his presence there, that he was an employee of the carrier or acting for it.

2. Carriers (§ 316 (9)*)—Evidence Held to Show Carrier Did Not Authorize Employees to Invite and Assist Passengers to Use Baggage Compartment in Leaving.—Evidence held to show that an electric railway company did not authorize its employees to invite and assist passengers to use the baggage and mail compartment of a combination car in leaving the car.

3. Carriers (§ 303 (6)*)—Entitled to Assume Passenger Would Not Attempt to Use Door of Baggage and Mail Compartment in Alighting.—Where steps for passengers were provided at the rear of an electric railway car, the front end of which was occupied as a baggage and mail compartment, and there were no steps in front, and a sign warned passengers to stay out of the baggage and mail compartment, the carrier had a right to assume that passengers would not use the door to such compartment as a means of exit.

4. Carriers (§ 303 (7)*)—Need Not Warn Passenger to Alight at Rear When Construction of Car Gave Such Notice.—Where the front end of an electric railway car was occupied by a baggage and mail compartment, and there were no steps at the door from such compartment to the ground, the construction of the car was notice to passengers to alight at the rear, and negligence could not be predicated on the carrier's failure to give a passenger such notice.

5. Carriers (§ 303 (6)*)—That Doors from Baggage or Mail Compartment Were Open Held Not Negligence as to Alighting Passenger.—Negligence on the part of an electric railway company towards an alighting passenger could not be predicated on the fact that a door leading from the passenger section of a combination car to the baggage and mail compartment and a door leading from such compartment to the ground were open, where it did not appear that they were opened by any employee, and the conductor and motorman attempted to deter passengers from taking that route in alighting.

6. Carriers (§ 303 (6)*)—Permitting Other Passengers to Alight by Passing through Baggage or Mail Compartment Held Not Negligence.—Negligence on the part of an electric railway company towards an

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

alighting passenger could not be predicated on the fact that it permitted a large number of passengers to pass out through the baggage and mail compartment, the door of which had no steps, where the conductor warned passengers to keep out of such compartment, and the motorman turned one of them back and closed the door.

7. **Carriers (§ 280 (1)*)—Not Required to Coerce Passengers into Exercise of Ordinary Care.**—A carrier must exercise the highest degree of care for the protection and safety of passengers, but is not required to coerce passengers who are adults and mentally competent into exercising ordinary care for their own safety.

8. **Carriers (§ 303 (6)*)—Not Required to Provide Steps at Door Not Intended for Passengers' Use.**—An electric railway company was under no obligation to provide steps for passengers at the door of the baggage compartment, which was plainly not intended for their use.

9. **Carriers (§ 303 (6)*)—Use of Stool at Door, Not Intended for Passengers, Not Negligence When Not Shown to Have Been Authorized.**—Negligence on the part of an electric railway company towards a passenger alighting through the door of the baggage compartment of a combination car could not be predicated on the fact that the motorman's stool was used at such door, where it was not shown that it was used by any employee of the company or with the company's authority.

10. **Carriers (§ 318 (9)*)—Evidence Insufficient to Show Person Assisting Alighting Passengers Was Acting for Company.**—Evidence held insufficient to show that a man in cap and uniform, assisting passengers to alight by a door not intended for passengers, was an employee of the company or acting for it.

11. **Carriers (§ 316 (1)*)—Burden on Plaintiff to Prove Negligence.**—In a passenger's action for injuries sustained in alighting at a door not intended for the use of passengers, the burden was on her to prove the negligence complained of.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 343.]

12. **Carriers (§ 303 (7)*)—Not Required to Warn Passengers of Unusually Long Stey from Stool Used without Authority.**—Where an electric railway company was not responsible for the use of the motorman's stool by passengers alighting at a door not intended for the use of passengers, it was under no duty to warn a passenger of the unusually long step from the top of the stool to the ground.

Error to Circuit Court, Alexandria County.

Action by Harriet W. Davidson against the Washington &

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Old Dominion Railway. Judgment for defendant, and plaintiff brings error. Affirmed.

W. C. Gloth and *Keith, McCandlish, Hall & Garnett,* of Fairfax, for plaintiff in error.

C. Vernon Ford, of Fairfax, *C. E. Nicol,* of Alexandria, and *Wilton J. Lambert,* of Washington, D. C., for defendant in error.

HOPKINS *v.* COMMONWEALTH ex rel. BUTTON,

Insurance Com'r, et al.

Jan. 20, 1921.

[105 S. E. 673.]

1. United States (§ 67 (1)*)—Recovery by Material Men on Government Contractor's Bond Rests on Federal Statute.—The right of one furnishing materials to a government contractor to recover on the contractor's bond is one created by the federal statute, allowing such recovery, and is not based on the contract between the materialman and contractor.

2. Principal and Surety (§ 148*)—Statute Relative to Suits against Surety Company Does Not Apply to Suit in Another State.—Acts 1906, c. 112, subsec. 8, § 21, authorizing suit against a surety company in the place where it has become surety or in the place in which the principal obligor can be sued, applies only to suits instituted and prosecuted within the state, and does not authorize such suits in another state.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 46.]

3. Principal and Surety (§ 58*)—Bonds Deposited with State by Surety Company are for Payment of Judgments Entered within State.—Acts 1906, c. 112, subc. 8, § 5, allowing a surety company to collect interest on bonds deposited to obtain license to do business until its failure to pay liability is ascertained by agreement of the parties or by judgment of the court, when construed according to the general intendment of the statute, and especially of subchapter 2, section 4, requiring the surety company to obtain a license to do business before making contracts, which clearly refers only to contracts within the statute, section 9, requiring consent to service of process on agent or insurance company, and section 12, requiring a surety company which fails to pay its taxes to cease to do business, applies only to judgments rendered by courts of the state.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 331.]

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